

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-220788

DATE: October 30, 1985

MATTER OF: Stewart-Warner Corporation

## DIGEST:

1. A bid containing a notation specifying delivery F.O.B. origin is nonresponsive to an IFB requiring that bids be submitted on an F.O.B. destination basis.
2. Bid that is ambiguous in a material provision, so that it is nonresponsive under one interpretation and responsive under the other, cannot be accepted.
3. A bid rendered nonresponsive by an alleged error may not be corrected after bid opening through mistake in bid procedures.

The Hobbs Division of the Stewart-Warner Corporation (Stewart-Warner) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA400-85-B-9301, issued by the Defense Logistics Agency for quantities of "time totalizing" meters to be delivered to three different locations.

We dismiss the protest without securing a report from the contracting agency, in accordance with our Bid Protest Regulations, since the protest shows on its face that it is without legal merit. 4 C.F.R. § 21.3(f) (1985).

Stewart-Warner was the low bidder under the IFB, which provided for delivery F.O.B. destination as a part of the description of each of the three line items. On page 2, opposite the words "INSP/ACCEPT POINT" for the line item 0001 quantity of meters, Stewart-Warner wrote "ORIGIN" with an asterisk and drew an arrow to an asterisk the firm had inserted in the page's lower left-hand corner. In that corner, Stewart-Warner had written "FOB POINT AND INSPECTION POINT: HOBBS DIVISION, STEWART WARNER CORP., YALE BLVD. & ASH STREET, SPRINGFIELD, IL," which is the origin point. The bid also contained the written notation "SEE PAGE 2" next to the words "INSP/ACCEPT POINT" for line items 0002 (page 3) and 0004 (page 4).

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Stewart-Warner alleges that it did not intend to take exception to the requirement for delivery F.O.B. destination, but only was attempting to restate the inspection/acceptance point, and mistakenly wrote "FOB POINT." Stewart-Warner contends that its mistake was a clerical one that is correctable under the mistake correction provisions of the Federal Acquisition Regulation, 48 C.F.R. § 14.406-3(a) (1984).

A bid which, if accepted by the government as submitted, would not obligate the contractor to perform the contract in exact conformance with all material provisions of the solicitation is nonresponsive and must be rejected. J.G.B. Enterprises, Inc., B-219317.2, July 31, 1985, 85-2 C.P.D. ¶ 109, affirmed, B-219317.4, Sept. 9, 1985, 85-2 C.P.D. ¶ \_\_\_\_\_. A bid which specifies that delivery will be F.O.B. origin when the solicitation requires that bids be submitted on an F.O.B. destination basis is nonresponsive, since it shifts to the government the risk of loss or damage to the supplies in transit contrary to the terms of the solicitation. Avantek, Inc., B-219622, Aug. 8, 1985, 85-2 C.P.D. ¶ 150.

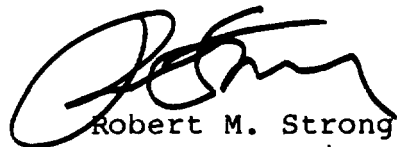
The notation on the Stewart-Warner bid that delivery will be F.O.B. origin is directly contrary to the specification in each line item that delivery is to be F.O.B. destination and thus renders Stewart-Warner's bid nonresponsive. The fact that Stewart-Warner may not have intended to bid as it did is not relevant, since for purposes of bid evaluation the offeror's intention must be determined from the bidding documents themselves. Free-Flow Packaging Corp., B-204482, Feb. 23, 1982, 82-1 C.P.D. ¶ 162.

We note Stewart-Warner suggests that at worst its bid was ambiguous on the matter, since the firm did not strike out the IFB's F.O.B. destination requirement preprinted next to each line item. However, a bid that is ambiguous in a material provision, so that it is nonresponsive under one interpretation and responsive under the other, cannot be accepted. J.G.B. Enterprises, Inc., B-219317.2, supra.

Finally, a bid that is nonresponsive may not be corrected after bid opening to be made responsive, since the bidder would have the competitive advantage of choosing to accept or reject the contract after bids are exposed by

choosing to make its bid responsive or not. Avantek, Inc.,  
B-219622, supra.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is positioned above the printed name.

Robert M. Strong  
Deputy Associate  
General Counsel